

DEVELOPMENT AGREEMENT

Single-Family Houses at
KAULUOKAHAI, INCREMENT IIB SUBDIVISION
Honouliuli, Ewa, Oahu

DEPARTMENT OF HAWAIIAN HOME LANDS

and

_____, 2017

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and effective this day of _____, 2017 ("Effective Date"), by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS** ("DHHL"), whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, but whose post office address is P.O. Box 1879, Honolulu, Hawaii 96805, and _____ ("Developer"), a corporation, whose principal place of business and post office address is _____.

RECITALS:

- A. DHHL owns in fee simple that certain parcel of land known as the Kauluokahai, Increment IIB subdivision located in Honouliuli, Ewa, on the Island of Oahu, City and County of Honolulu, Hawaii.
- B. Under Section 220.5 of the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), DHHL is authorized to enter into and carry out contracts with private developers to develop available lands for homestead, commercial, and multi-purpose projects.
- C. On January 11, 2017, DHHL announced and noticed a Request for Proposals ("RFP") which was directed to private developers who met the qualifications described therein to submit proposals for the development of up to one hundred (100) single-family houses in the Kauluokahai, Increment IIB subdivision (hereinafter referred to collectively as the "Project", individual houses are hereinafter referred to as "Project Houses").
- D. Pursuant to the RFP process, Developer submitted its Project Proposal dated February 27, 2017.
- E. Pursuant to Chairman's Approval of the Developer Selection, dated _____, and attached hereto as Exhibit "A", the Chairman of the Hawaiian Homes Commission ("HHC") selected Developer as the entity qualified to develop the Project per the specifications of the RFP.
- F. This Agreement covers the development of the Project, which is further described below, and is intended:
 - (1) To establish the terms and conditions under which Developer will proceed to develop the Project in accordance with Developer's Project Proposal;
 - (2) To set forth the responsibilities and roles of DHHL and Developer; and
 - (3) To establish the agreement between DHHL and Developer as to the financial risks and other obligations to be assumed by them, respectively, including all costs which may be incurred by either of them. Developer understands and agrees that all financial and other obligations which Developer has incurred up to the date of this Agreement and hereafter are Developer's sole responsibility.

This Agreement shall incorporate by reference: (1) the RFP, dated January 11, 2017, and all

attachments and addenda thereto; (2) Developer's Project Proposal dated February 27, 2017 ("Project Proposal"); and (3) any change orders or amendments to this Agreement made by Developer and/or DHHL to complete the Project.

AGREEMENT:

In consideration of the recitals and the mutual covenants, obligations and conditions set forth in this Agreement, DHHL and Developer hereby mutually agree as follows:

1. Description of Project. The name of the Project is "Single-Family Homes at Kauluokahai, Increment IIB Subdivision". The name of the Project may be changed only with DHHL's prior written approval. The Project Land is located in a residential subdivision located on the Island of Oahu, City and County of Honolulu, Hawai'i, within the Kauluokahai master-planned community, as more particularly shown on Exhibit B attached hereto. The Kauluokahai, Increment IIB Subdivision consists of one hundred sixty (160) single-family residential house lots, of which Developer will construct up to 100 single-family houses on lots specified by Exhibit C attached hereto ("Project Land").
2. Term. DHHL shall separately issue to Developer a Notice to Proceed, as established below, establishing the effective date on which work under this Agreement is to commence. Developer is required to complete all work under this Agreement within _____ (___) Calendar Days of the effective date of the Notice to Proceed, or unless terminated sooner pursuant to the terms of this Agreement.

When the interests of DHHL so requires, DHHL may terminate this Agreement for convenience by providing six (6) weeks prior written notice to the Developer.

Unless terminated, DHHL may extend the term to complete the work under this Agreement for an additional period of up to one year or portions thereof without the necessity of re-bidding, upon mutual agreement in writing at least sixty (60) days prior to the expiration date set by the Notice to Proceed. The house prices for the extended period shall remain the same as described in the Project Proposal.

3. Sales Program. Developer will market and sell the Project House to qualified and eligible DHHL beneficiaries ("Beneficiaries") in accordance with the prices and procedures set forth on Exhibit D attached hereto ("Sales Program"), which Sales Program has been reviewed and approved by DHHL. Samples of letters and forms in furtherance of the Sales Program which are intended to be sent to any Beneficiary shall first be approved by DHHL. Any meeting agendas and schedules shall first be approved by DHHL. The Sales Program may be amended by Developer, subject to DHHL approval. Any and all net sales proceeds from the purchase of any Project Houses by a Beneficiary shall be due and payable solely to Developer:
 - A. Each applicant will complete, sign, and deliver to DHHL an "Application for Homestead Lease".

- B. Each Beneficiary must be “native Hawaiian” as that term is defined under HHCA Section 201(a)(5), and be otherwise eligible to receive a Homestead lease pursuant to the HHCA and DHHL’s Administrative Rules;
 - C. The selection of Beneficiaries and the specific lot/house which each Beneficiary may purchase will be accomplished through DHHL’s Homestead award program procedures and will be administered solely by DHHL in accordance with this Agreement.
 - D. Beneficiaries will be required to attend and successfully complete a homeownership counseling course if and to the extent that such a program is required by any lender lending monies to the applicable Beneficiary for the applicable house purchase.
 - E. Beneficiaries must use their houses as their principal dwelling and must sign a certificate of owner-occupancy.
 - F. The Project Houses will be sold by Developer subject to the relevant provisions of the HHCA, DHHL’s Administrative Rules, and this Agreement.
4. DHHL Assistance. In addition to any and all other obligations under this Agreement, DHHL, at its sole cost and expense, shall be responsible for providing the following assistance to the Project and Developer in furtherance of its public purpose of creating housing opportunities for native Hawaiians.
- A. Development Rights. DHHL grants to Developer the right to develop the Project on the Project Lands in accordance with the terms of this Agreement, provided, however, that notwithstanding any provision to the contrary in this Agreement, such development rights are qualified as follows:
 - 1) Developer shall not have any legal or equitable right, title, or interest in or to any portion of the Project Land; and
 - 2) Developer's right to enter the Project Lands is limited to entering the Project Land to develop the Project in accordance with the terms of this Agreement.
 - B. Assistance Necessary to Start and Complete Project Houses Construction.
 - 1) Land Site Preparation. DHHL will construct and complete, on or prior to and as a condition of issuance of the “Notice to Proceed” to Developer as defined and set forth below, any and all Project grading, fill, compaction, roadway and infrastructure improvements of whatever nature, all as set forth in the subdivision construction plans prepared by Community Planning and Engineering, Inc. and approved by the City and County of Honolulu (C&C) (“Infrastructure Plans”), which Infrastructure Plans were provided to the developer as Exhibit G of the RFP, and will further, on or prior to and as a condition precedent to issuance of the Notice to Proceed, provide Developer with (a) record drawings of the roadway construction, site grading and any other improvements as set forth in the Infrastructure Plans and (b) evidence satisfactory to Developer that all such work has been completed in accordance with the Infrastructure Plans. In connection

therewith, DHHL represents and warrants to Developer that there is no environmental or soils condition on or relating to the Land which will in any event prevent or delay Developer in commencing and completing the Project in accordance with this Agreement.

- 2) Main Utility Lines. DHHL will construct and complete, on or prior to and as a condition of issuance of the Notice to Proceed, all Project utility lines as shown on the Infrastructure Plans, including laterals to the Project Houses site boundaries as shown on the Project Map. DHHL shall be responsible for paying all advances for construction of such main utility lines; any refunds to said advances shall be payable to DHHL.
- 3) Facility Charges. DHHL will pay all water and sewer systems facilities hookup or comparable charges. DHHL will be responsible for securing adequate potable water and sewer commitments for the Project such that each of the Project Houses shall have full access thereto upon its conveyance to a Beneficiary, and DHHL shall provide Developer with reasonable assurance of the availability thereof on or prior to and as a condition of issuance of the Notice to Proceed.
- 4) Public Access. DHHL will otherwise construct all roads, improvements and access within the Project in accordance with the Infrastructure Plans.
- 5) Survey. DHHL will obtain and provide to Developer, on or prior to and as a condition of issuance of the Notice to Proceed, a survey and a licensed surveyor's certificate showing the Land and the dimensions and area thereof, together with the dimensions and locations of any and all improvements constructed in accordance with the Infrastructure Plans, including but not limited to improvements, utilities, parking areas, easements, roadways, and the distances to and names of each nearest intersecting street.
- 6) Other. DHHL will otherwise construct, provide or obtain any and all other improvements, record drawings, filings, certificates or other items or rights as are otherwise reasonably necessary to complete all of the Project, excepting solely the Project Houses which are Developer's responsibility, and to enable Developer to market and sell to Beneficiaries fully completed Project Houses in a fully completed Project inclusive of fully hooked-up and operational utilities. DHHL will further bear, at its sole cost and expense, any and all other payments, impact fees or other items as may be required to complete the Project except if and to the extent this Agreement specifically provides that Developer shall be responsible for such expenses. On or prior to and as a condition of issuance of the Notice to Proceed, DHHL will certify to Developer that it has complied and will comply with the requirements of this paragraph.

C. FHA Insurable Loan.

- 1) DHHL shall issue to each Beneficiary upon closing of the sale by Developer to the Beneficiary of each of the Project Houses a homestead lease ("Lease") covering

that portion of the Land upon which the house is situated and as set forth on the Project Map. Each such Lease shall be in a form sufficient to qualify for an FHA insured loan.

- 2) DHHL shall comply with HUD's Direct Endorsement Program Expanded to Cover Loans on Hawaiian Home Lands as stated in the HUD Circular Letter 93-06.
 - D. Beneficiary Meetings. DHHL will coordinate with and assist Developer in scheduling and conducting Beneficiary orientation, lot selection and other meetings necessary or advisable to carry out their mutual purposes under this Agreement, including the scheduling and the setting of any agenda items for any such meeting as well as providing speakers to represent DHHL.
 - E. Recording of Leases, Mortgages and Related Documents. DHHL shall be responsible for the recording of any leases, mortgages and other documents necessary for or incident to the conveyance of any house by Developer to a Beneficiary, and shall do so in a timely manner in accordance with applicable contracts.
5. Processing of Project. In addition to the other requirements of this Agreement, the Project shall be Developed and the Project Houses marketed and sold in accordance with the following procedures:
- A. Developer Proceeding with Development. As of the Effective Date, Developer has provided DHHL with (a) schematic plans and outline specifications ("Project House Plans") which Project House Plans DHHL has approved in concept, (b) a preliminary Project Budget implementing the Sales Program which DHHL has approved in concept, and (c) a preliminary Project Schedule which DHHL has approved in concept, copies of documents (b) and (c) are attached hereto as Exhibits E and F, respectively. Developer and DHHL undertake to agree to a final Project Budget and Project Schedule at their earliest opportunity as more fully set forth in paragraph 6.A. below; provided, however, that DHHL shall not be entitled to issue a Notice to Proceed unless and until such agreement on all such final documents and matters is reached.
 - B. Compliance with Normal Procedures, Applicable Laws, Ordinances etc. House building plans, construction documents and other submissions ordinarily required by the State of Hawaii or C&C shall be submitted to the appropriate agencies to be reviewed for conformance with the relevant standards and requirements.
 - C. Building Permits. Developer shall be responsible for obtaining from the C&C, and for providing DHHL with copies of, all building permits for construction of the Project Houses in accordance with the Project House Plans. Developer shall use its best efforts to obtain all such building permits at its earliest opportunity; provided, however, that DHHL shall not be entitled to issue a Notice to Proceed unless and until DHHL has provided to Developer and/or the C&C all items within DHHL's control and required for issuance of such building permits including a final Land subdivision map, Project street addresses approved by the C&C.

D. Notice to Proceed. In the event of, upon and effective as of satisfaction of all conditions precedent to issuance by DHHL of the Notice to Proceed as set forth in this Agreement, DHHL shall deliver to Developer a written notice (“Notice to Proceed”) instructing and authorizing Developer to proceed with the construction of the Project Houses. DHHL, with Developer’s good faith cooperation, shall use its best efforts to satisfy all such conditions precedent to issuance of a Notice to Proceed at its earliest opportunity. In the event that a Notice to Proceed is not issued by _____, or any Project House is not completed by _____ despite Developer’s best efforts hereunder, then, as to any such Project Houses, DHHL and Developer shall agree on a revised price for such Project Houses which reflects the increased costs to Developer to construct, complete and sell the Project Houses attributable to the resulting delay in completion and sale. It shall be an additional condition precedent to DHHL’s issuance of a Notice to Proceed that Developer shall have either (a) obtained final approval from a lender acceptable to Developer (“Interim Lender”) for a loan (“Interim Loan”) to finance the Project on terms and conditions satisfactory to Developer or (b) waived such requirement in writing.

E. Project Budget and Project Schedule. From and after issuance of the Notice to Proceed, Developer shall submit monthly to DHHL for DHHL’s review and approval:

- 1) An update to the Project Budget showing Developer's revised estimated costs for developing and constructing the Project Houses, including Developer’s estimates of costs incurred to date and over the remaining term of construction;
- 2) An update to the Project Schedule showing Developer's progress to date and estimated time for completing all Project Houses.

The updates shall be in the same form as Exhibits F and G, respectively, which form may be modified by Developer subject to DHHL’s prior review and approval.

F. During the course of house construction, DHHL, including its employees, consultants and other representatives, shall have the right to enter the Land and to inspect the quality and quantity of the Project Houses.

6. Developer’s Agreement to Develop the Project. Developer agrees to timely commence and complete the Development of all Project Houses lien-free upon and subject to the terms and conditions of this Agreement, including the following:

A. Finalizing Project Documents. The final Project documents, including the final Project Budget and Project Schedule, shall include:

- 1) A narrative describing the overall Project concept.
- 2) Architectural and engineering planning and design documents such as plot plans showing the finish floor elevation of each house, the location of the house on the portion of the Land to be subject to the Lease, corner elevations, drainage swales, and house plans for each model type with the necessary architectural or professional stamp. The house plans shall include foundation designs which shall include the

recommendations by PSC Consulting LLC in its Revised Preliminary Geotechnical Exploration Report for the Project dated June 30, 2009.

- 3) Developer's estimated costs for developing and constructing the Project, including Developer's estimates of costs incurred to date and over the remaining term of development. The final Project Budget can only be revised with DHHL's prior written approval. Any revision to the final Project Budget which DHHL approves shall be incorporated herein by reference.
 - 4) The final Project Schedule can only be revised with DHHL's prior written approval. Any revision to the final Project Schedule which DHHL's approves shall be incorporated herein by reference.
 - 5) Rate of house production and projected sales.
 - 6) Description of Developer's sales program and sales price of the Project Houses together with the figures and analysis used to arrive at such sales prices.
 - 7) Amendments to the Proposal agreed to by DHHL.
 - 8) Any other document, agreement, or plans requested by DHHL deemed necessary for development of the Project.
- B. Risks of Development. Developer understands and agrees that Developer is not guaranteed any profit in connection with the development of the Project.
- C. Developer's Expenses. Developer agrees to contract and pay for all expenses relating to Development of the Project Houses including related architectural, engineering, surveying, legal, and development administration costs.
- D. Project Cost Overruns. If the actual cost and expense of any item shown in the Project Budget exceeds the amount budgeted for such item shown therein, funds to pay for the difference shall be paid from cost savings on any other item and then from contingency or by additional equity from Developer. Developer shall be responsible all costs and expenses allocable hereunder to Developer even if over and above the amount of all net sales proceeds for all houses.
- E. Compliance with Laws, Ordinances, Codes, Regulations, etc. Without limitation, Developer shall be responsible for complying with all laws, ordinances, codes, and regulations and governmental requirements, including those pertaining to the environment, ecology, health and safety, which apply to the development, construction, marketing and sale of the houses, subject, however, to any exemption or pre-emption from the same which DHHL shall adopt with the powers granted to DHHL under HHC Laws.
- F. No Condemnation or Damage. The Notice to Proceed shall be issued only if, prior thereto, no part of the Project (or the improvements thereon, if any) shall have been taken in condemnation or other title proceeding, nor shall any such proceeding be

pending. Prior to issuance of the Notice to Proceed and Developer entering the Land to begin house construction, an inspection of the Land shall be conducted by Developer and DHHL, any damage or defects thereto shall be acknowledged in writing by both parties, and DHHL shall correct such damage or defects at its earliest opportunity. Any further damage or defects to the Land arising out of Developer's house construction activities shall be the responsibility of Developer, which shall correct such damage or defects at its earliest opportunity. In the event that Developer wishes to conduct tests or inspections prior to house construction, any resulting damages to the Land shall be the responsibility of Developer. In the inspection of the Land, Developer shall be shown in particular the property pins and swales, and Developer shall be responsible to maintain the pins and swales.

- G. Bankruptcy or Insolvency. The Notice to Proceed shall be issued only if Developer has not commenced any bankruptcy, reorganization, arrangement, or insolvency proceeding.
- H. Hold Harmless Agreement. Developer, agrees to pay, defend, indemnify and hold harmless DHHL from any and all claims of any person or entity, including brokers' claims for commissions or fees, mechanic's and materialmen's claims which arise out of, or in connection with the development, construction, marketing and sale of any house and which claims are made within one (1) year after occupancy of such house.

This agreement shall not cover the negligence or willful acts, omissions, failure to act, or misconduct of HHC, DHHL or their employees and agents.

7. Required Documents and Information.

- A. Information about Developer. DHHL acknowledges that Developer has submitted the following information about Developer as required by the Request for Proposals and that such information is satisfactory to DHHL:
 - 1) Corporate, Partnership and Other Organizational Documents. Copies of organizational documents including Articles, By-Laws, and Corporate Resolutions, as applicable.
- B. Development Documents. Developer shall additionally submit copies of the following contracts to DHHL as applicable:
 - 1) Architectural Contract. The architectural contract for the houses for review and approval by DHHL, which contract shall be with an architect or architectural firm which is licensed to engage in the architectural business in Hawaii and is approved by DHHL.
 - 2) Engineering Contracts. Any engineering contracts for review and approval by DHHL, which contracts shall be with an engineer or engineering firm which is licensed to engage in the engineering business in Hawaii and is approved by DHHL.

- 3) Project Management, Marketing Management and Financial Management Contracts. Any contracts for project management, marketing and financial management for review and approval by DHHL.
- 4) Architect's and Engineer's Insurance. For all architects, engineers and other design professionals providing any architectural, engineering or other design services in connection with the development and/or construction of the Project, such errors and omissions insurance and other liability insurance as shall reasonably insure them against claims of negligence, breach of warranty or other claims arising out of the design and construction of the Project. Developer shall deliver to DHHL evidence that all such architectural, engineering and design professionals have purchased and have in full force and effect insurance providing a minimum of \$500,000 per claim and \$500,000 per aggregate.
- 5) Permits and Approvals. Developer shall additionally submit copies of the following government permits and approvals to DHHL as applicable:
 - a) approvals of the house plans by State and C&C governmental departments, agencies or bodies having jurisdiction over the same;
 - b) building permits or similar permits;
 - c) Developer shall be responsible for the payment of all fees and other costs which are imposed by any such governmental department, agency or body having the authority for issuing such permits or approvals and related to such permit or approval issuance.
- 6) Other Contracts. Developer shall submit to DHHL copies of all contracts, subcontracts and any other agreements for construction of the houses and all related fixtures and personal property.
- 7) [reserved]
- 8) Agreements. Developer shall obtain agreements from the general contractor, architect, and engineer who have contracted to work on the houses to the effect that each of them shall continue to perform for DHHL the services which they have contracted to perform for Developer at any time at the request of DHHL upon the default hereunder of Developer, provided DHHL assumes and complies with the obligations of Developer under their respective contracts.
- 9) Insurance. Developer shall maintain in force at all times the following policies of insurance in connection with the design, finance, construction, marketing and sale of the houses:

Insurance Coverage

General Liability

Minimum Policy Limits

Bodily Injury and Property
Damage (combined single limit):

(occurrence form)	<u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate
	Personal Injury: <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate
Automobile Insurance (covering all owned, non-owned and hired automobiles)	Bodily Injury: <u>\$1,000,000</u> per person and <u>\$1,000,000</u> per occurrence
Workers' Compensation (statutory limit is required by laws of the State of Hawai'i)	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the Developer and, in case any sub-contractor fails to provide similar protection for all his employees, to all employees of subcontractors.
Builder's risk covering the general contractor and all subcontractors	100% replacement value
Fire and extended coverage	100% replacement value
Malicious mischief	100% replacement value
Flood insurance (if required)	Maximum coverage available

- a) The State of Hawai'i, Department of Hawaiian Home Lands, its elected and appointed officials, officers, employees, and agents shall be named as additional insured with respect to operations, services, or products provided to the State of Hawai'i. Developer agrees to provide to the DHHL, before the effective date of this Agreement, certificate(s) of insurance necessary to evidence compliance with insurance provisions of this Agreement. Developer shall keep such insurance in effect and the certificate(s) on deposit with DHHL during the entire term of this Agreement. Upon request by DHHL, Developer shall furnish a copy of the policy or policies.
- b) Failure of Developer to provide and keep in force such insurance shall be regarded as a material default under this Agreement. DHHL shall be entitled to exercise any or all of the remedies provided in this Agreement for default of Developer.
- c) The procuring of such required policy or policies of insurance shall not be construed to limit Developer's liability under this Agreement or to fulfill indemnification provisions and requirements of this Agreement.

Notwithstanding said policy or policies of insurance, Developer shall be obliged for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Agreement.

- d) Developer shall immediately provide written notice to DHHL should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.
- e) DHHL is a self-insured State agency. Developer's insurance shall be primary. Any insurance maintained by the State of Hawai'i shall apply in excess of, and shall not contribute with, insurance provided by Developer.
- f) The Developer shall require all subcontractors to have in full force and effect the same insurance coverage as required of the Developer. Such insurance shall name the State of Hawai'i, Department of Hawaiian Home Lands, its elected and appointed officials, officers, employees, and agents as additional insured with respect to operations, services or products provided to the State of Hawai'i. The Developer shall be responsible to enforce its subcontractors' compliance with these insurance requirements and Developer shall, upon request, provide DHHL a copy of the policy or policies of insurance of any subcontractor.

C. Sales Documents. The following documents shall be submitted to DHHL for approval as soon as practicable and within a time frame that is consistent with the Project Schedule.

- 1) Escrow Agreement. All payments made by Beneficiaries for Project Houses must be deposited with a Hawaii escrow. Developer shall enter into a written escrow agreement with an escrow or escrows of Developer's choice. The escrow and the form and content of the escrow agreement shall be subject to DHHL's prior approval. Escrow shall retain only such funds that are necessary to pay escrow fees and closing costs and sales commissions, if any, and shall immediately disburse the net sales proceeds to Developer or such other entity as directed by Developer.
- 2) Escrow Letter. Escrow shall acknowledge receipt of and agree to comply with the terms of the escrow agreement.
- 3) Form of Sales Contract.
- 4) Specimen Bill of Sale.
- 5) Broker's Agreement.
- 6) Appraisal of each house, or Master Appraisal.
- 7) FHA and architect inspection reports.
- 8) Warranty Package.

8. Warranty; Warranty Program. Developer and Developer's general contractor shall provide each purchasing Beneficiary with a warranty covering house construction or material/supply defects, and shall establish a warranty program pursuant to which Developer and the general contractor agree to promptly respond to claims of such construction or other defects and to correct and repair construction or material/supply defects.

Under the warranty program, Developer shall provide each such purchaser with a "warranty package" which describes all warranties which Developer, general contractor, and any materialman or other contractor are giving to the purchaser and how to make a warranty claim to the Developer. Such warranties shall be for a term of no less than one year from the date the purchaser's purchase of the house is closed.

Notwithstanding any provision to the contrary in any agreement, including surety bond, sale or purchase agreement, or this Agreement, and whether or not DHHL is a party thereto or has approved such agreement, pursuant to which agreement Developer or a contractor, materialman or other person has disclaimed or limited any warranty, liability or responsibility to respond to claims of construction or material/supply defects and to correct and repair construction or material/supply defects in or with respect to the houses, Developer agrees to indemnify and hold harmless DHHL from all responsibility or liability to anyone, including the owners and occupants of the houses and any association or organization representing such owners' or occupants' rights or interests, with respect to all such matters. DHHL shall not have any responsibility or duty and DHHL shall not assume any responsibility or liability for responding to claims of construction or material/supply defects or to correct and repair construction or other defects. Developer shall not be responsible for claims relating to the performance of DHHL's work under or fulfillment of its other responsibilities pursuant to this Agreement or any provisions of DHHL's homestead lease agreements with Beneficiaries.

If Developer is not timely in responding to warranty claims, DHHL may require Developer to post bonds, warranty insurance or other security, including cash, letter(s) of credit, or equivalent, and may withhold disbursement of any funds, including profit, which is allocated for payment to Developer, to secure Developer's responsibility or liability to respond to claims of construction or material/supply defects and to correct and repair and construction defects.

9. No Assignment of Agreement or Other Rights. The identity of Developer is of material importance to DHHL. Except as otherwise set forth in this section or otherwise agreed by Developer and DHHL, this Agreement cannot be assigned by Developer to another developer or to any third party, nor can there be any sale or transfer of any majority interest in Developer without the written consent of DHHL. Notwithstanding the foregoing, DHHL acknowledges and agrees that Developer may assign this Agreement and its rights and liabilities hereunder to its Interim Lender as security for the Interim Loan. With the exception of such potential assignee and in accordance with this Agreement, DHHL shall have no obligations whatsoever hereunder to any third parties.
10. Publicity. Developer shall have sole responsibility for conducting and funding the advertising and promotional program for the Project Houses. The advertising and

promotional program shall publicize the fact that the Project is being developed by Developer with assistance from DHHL. The Project Budget shall include the cost of such publicity as an item of expense. In addition to its obligations hereunder, DHHL may, in DHHL's sole discretion, participate, at its cost, with Developer in the advertising and promotional program.

11. Relationship of Parties. In the performance of its work under this Agreement, Developer shall be an "independent contractor" with the authority and responsibility to control and direct the performance and details of all such work. There shall be no partnership, joint venture, employer and employee, master and servant, or other agency relationship between DHHL and Developer, nor shall DHHL be deemed to be the developer of the Project or a seller of the houses. Developer, inclusive of any person acting by, through, under, or for the benefit of Developer (such as, for example, any real estate broker or sales person) shall not represent itself as being a partner, joint venturer, employee, servant, or agent of DHHL, nor shall Developer, inclusive of any person acting by, through, under, or for the benefit of Developer, have any authority to bind, act for, or represent DHHL in any respect. Developer shall be developing and constructing the Project Houses on Developer's own behalf and shall pay, indemnify, defend and hold DHHL harmless from all claims, demands, lawsuits, judgments, deficiencies, damages (whether paid by DHHL as part of a settlement or as a result of a judgment) and expenses, including attorney's fees and all costs of suit, made against DHHL or incurred or paid by DHHL arising out of or in connection with Developer's development and construction of the houses.

Developer shall not be responsible for indemnifying DHHL for the negligence, willful acts or omissions of DHHL, its employees or agents.

12. Reviews, Inspections and Approvals. All reviews and approvals inspections and other services rendered and relied on or performed by DHHL or their agents, whether or not paid for by Developer, shall be rendered or relied upon by DHHL solely for DHHL's benefit and protection. DHHL shall have the right to make inspections of the Project Houses during construction. If DHHL requires the services of a private outside consultant, including engineers and/or architects, to assist DHHL in monitoring or inspecting the Project, DHHL shall be responsible for the payment of the fees and costs of such private outside consultant.

Developer shall be responsible for the quality and quantity of work that is represented to be completed.

Developer, surety, contractor, house purchasers or anyone else, including any class or association of purchasers or owners of houses, shall not nor shall any of them have any right to rely upon any reviews, approvals, inspections and services by or on behalf of DHHL.

13. Force Majeure. In the event that either DHHL or Developer shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, civil or criminal proceedings, injunctions, writs, appeals, stays or any other reason of a like nature, which is not within the control of, or which is not the fault of, or capable of being prevented by the party delayed in

performing work or doing acts required under the terms of this Agreement, and including, in the case of Developer, delays in approvals, consents, or issuance of permits by DHHL, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. DHHL or Developer shall notify the other in writing of the date of commencement of any force majeure event upon which DHHL or Developer intends to rely for an extension of the period for the performance of any such act (which notice shall be given within thirty (30) days after the commencement date of any such force majeure event), and shall also notify the others in writing of the date on which any such event ended. Notwithstanding the foregoing, in no event shall the occurrence of a force majeure hereunder extend the original date of performance of any such act by more than sixty (60) days. In the event that such act has not occurred by sixty (60) days after the original date of performance by reason of force majeure, then, on election by either party, this Agreement shall thereupon be deemed terminated. In such event, neither party shall have any remedy therefor, excepting only that Developer shall be entitled to complete and sell any Project House as to which, as of such termination, it had commenced any work.

14. Default.

A. Developer shall be in default under this Agreement if:

- 1) Developer shall fail to timely pay, perform and/or complete Developer's obligations under this Agreement, which shall include the failure to build the Project Homes according to the approved house plans.
- 2) Developer shall become insolvent, or shall become voluntarily or involuntarily dissolved or shall make any assignment for the benefit of creditors or shall generally fail to pay Developer's debts as they become due.
- 3) Developer shall become the subject of an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted and such order shall remain in effect and unstayed for a period of sixty (60) consecutive days.
- 4) Developer shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law, or regulation.
- 5) Developer shall file any answer admitting the material allegations of any petition filed against Developer in any such proceedings.
- 6) Developer shall seek or consent to or acquiesce in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of developer or of all or a substantial part of Developer's property(ies) or assets.
- 7) Developer shall take action looking to Developer's dissolution or liquidation, or within sixty (60) days after commencement of any proceedings against Developer seeking any arrangement, composition, adjustment, liquidation, dissolution or similar

- relief to which Developer may be entitled under any present or future statute, law or regulation and such proceedings shall not have been dismissed.
- 8) Within sixty (60) days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of Developer, without DHHL's consent or acquiescence, any such appointment or possession shall not have been vacated or terminated.
 - 9) There shall be any attachment, execution or other judicial seizure of, or otherwise materially affecting all or any part of Developer's rights under this Agreement or the Project Houses, or any similar action on account of Developer's acts or failure to act, unless, in any such case, such attachment, execution or seizure is set aside, dissolved, bonded off or otherwise eliminated within thirty (30) days of its occurrence.
 - 10) Any third person shall obtain an order or decree in any court of competent jurisdiction enjoining or prohibiting Developer from performing this Agreement and such proceedings shall not be discontinued and such order or decree shall not be vacated within thirty (30) days after the granting thereof.
 - 11) There shall be a sale, transfer, hypothecation, assignment or conveyance of all or any part of this Agreement other than as allowed hereunder.
 - 12) Any representation or warranty made by or on behalf of Developer herein, shall prove to have been false or incorrect in any material respect on the date as of which such representation or warranty was made.
 - 13) A final judgment is entered which alone or with other outstanding final judgments against Developer would have a material adverse effect on its financial ability to perform its obligations in connection with this Agreement and (i) such judgment shall not be discharged, or (ii) within thirty (30) days after entry of such judgment the execution thereof shall not be stayed pending appeal, or (iii) such judgment shall not be discharged within thirty (30) days after the expiration of any such stay.
- B. Notice of Default. If Developer shall be in default, DHHL shall notify Developer of such default in writing to Developer's address shown above by any means, including without limitation personal delivery or certified or registered mail.

No failure, forbearance or delay on the part of DHHL in exercising any power or right under this Agreement shall operate as a waiver of the same or any other power or right, and no single or partial exercise of any such power or right shall preclude any other or further exercise thereof or the exercise of any other such power or right. No action taken by DHHL pursuant to this Agreement to proceed with the development of the Project despite Developer's default shall constitute a waiver of any of the conditions precedent which Developer is required to perform to proceed with the development of the Project. If Developer fails, refuses, neglects or is unable to perform or satisfy any such condition, DHHL shall not be precluded from thereafter declaring such failure, refusal, neglect or inability to be an event of default as provided in this Agreement.

- C. Cure Period. Developer shall have thirty (30) calendar days to cure a default which can be remedied and cured by the payment of money.

If a default cannot be remedied by the payment of money, Developer shall have sixty (60) calendar days in which to cure such default. Developer shall immediately proceed with taking all action necessary to cure the default. During such period of default, Developer shall protect the Project from loss, damage, vandalism, waste or other destruction and shall maintain the Project Schedule to the extent that it is practicable to do so. Developer shall provide DHHL with progress reports upon reasonable request.

Upon the occurrence of such default, DHHL may, but shall not be required to, advance funds or agree to undertake to advance funds over and above any undisbursed loan proceeds to any third party or for any reason to eliminate or reduce the risk of loss resulting from such default. Such agreement or agreements by DHHL shall be in such form and have such content the funds advanced shall be in such amount, and such advances shall be made at such time or times and upon such terms and conditions as DHHL, in its judgment deems appropriate, necessary or useful to eliminate, reduce or indemnify DHHL or the Project against any such danger. All sums paid or agreed to be paid by DHHL pursuant to such agreements or undertakings shall be for the account of Developer. Developer shall reimburse DHHL upon demand, for any such sums paid by DHHL together with interest computed at seven and one-half percent (7.5%) until the date of reimbursement.

- D. DHHL's Rights. If Developer has been declared to be in default and fails to cure such default within the time period allowed hereunder, Developer agrees that DHHL shall have all legal and equitable rights to which DHHL may be entitled under the law including without limitation the following rights and remedies:

- 1) Terminate all of Developer's right, title and interest under this Agreement and take over the completion of the Project.

Notwithstanding such termination, Developer shall not be released from the obligation to pay and perform all outstanding obligations under this Agreement, including payment of any unpaid Developer's Equity and damages arising out of delays and cost overruns incurred to complete the Project lien free.

- 2) Retain all deposits, funds or security that have been paid or delivered to DHHL or escrow.
- 3) Keep and use all house plans and other Project documents and work product over which Developer can exercise legal control and transfer, whether prepared by Developer or Developer's consultants and, in DHHL's sole discretion, negotiate with Developer's consultants and contractors to complete the Project.
- 4) Enter into negotiations with other developers and enter into a development agreement with another developer to complete the development of the Project pursuant to development rights afforded to such person under a development agreement.

- 5) Complete the development of the Project and use the Developer's Equity and any funds or security which Developer has paid or deposited with DHHL to complete the Project.
- 6) Require Developer to put up additional security in an amount necessary to pay for the completion of the Project lien-free and to repay the Interim Loan. DHHL may require such additional capital to be in the form of cash or a letter of credit (or equivalent) or bond.
- 7) Sue for damages including architectural and engineering fees and costs and attorney's fees and costs.
- 8) Seek specific performance.
- 9) Stop all disbursement of any interim loan.

All rights, powers and remedies herein given to DHHL are cumulative and not alternative and are in addition to all rights, powers and remedies afforded by statutes or rules of law and may be exercised concurrently, independently or successively in any order whatsoever.

E. Limitation of Developer's Remedies in the Event of DHHL's Default. DHHL shall be in default under this Agreement if DHHL does not timely perform DHHL's respective obligations under this Agreement or any related agreements. In the event of DHHL's default, Developer, including any of Developer's successors or assigns, agrees that Developer's rights and remedies shall be expressly limited to (1) termination of this Agreement, (2) entitlement of Developer to complete and sell all houses as to which, as of the date of termination, Developer had commenced work, and (3) payment to Developer of an amount, if any, equal to Developer's net Project costs that are not recovered within six (6) months after termination from the sale of houses as to which, as of the date of termination, Developer had commenced work.

15. Integrated Agreement. All prior representations and agreements, including memorandum of understanding, between the parties are merged into this Agreement. The terms of this Agreement may not be waived, modified, or in any way changed by implication, through conduct, correspondence, or otherwise, unless such waiver, modification, or change shall be specifically agreed to in writing by DHHL and Developer.

Any waiver by DHHL in whole or in part any of the terms and conditions hereunder, including any extension of time, shall be specific and not general. Each waiver shall only apply to the specific conditions and circumstances surrounding it.

The terms and conditions as set forth in this Agreement, including the exhibits which are attached and incorporated by reference, supersede all prior correspondence and negotiations and are subject to all laws, regulations, and interpretations which now or may in the future affect DHHL and/or the financial and other assistance from DHHL which is contemplated by this Agreement.

16. General Terms.

- A. Approval and Consent. Except as otherwise provided in this Agreement, where the consent or approval of DHHL or Developer is required by any provision of this Agreement, such approvals or consents shall not be unreasonably withheld or delayed and shall not be conditioned upon the payment of any compensation. If no written objection is received by Developer or DHHL within fifteen (15) calendar days after the request for approval and consent is delivered, then such approval and consent shall be deemed to have been given.
- B. Dispute Resolution/Attorneys' Fees and Costs. In the event of any dispute under this Agreement, Developer and DHHL agree that, prior to initiating any litigation to resolve any such dispute, they will engage in good faith in voluntary mediation toward resolving such dispute conducted by Dispute Prevention and Resolution, Inc. of Honolulu. Any such litigation shall be filed in the Circuit Court of the First Circuit, State of Hawaii. Should any such litigation be commenced between the parties hereto concerning this Agreement, the subject matter of this transaction or the rights and duties of either in relation thereto, the prevailing party in such litigation shall be entitled to (in addition to such other relief as may be granted) a reasonable sum for its attorneys' fees and costs of litigation as shall be determined by the court.
- C. Amendments. This agreement may not be amended or modified in any respect except by an instrument in writing executed by the parties.
- D. Cooperation. The parties shall cooperate with one another in effecting this Agreement and agree to execute such further and additional mutually approved documentation required to facilitate and complete the transactions contemplated in this Agreement.
- E. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii.
- F. Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of DHHL, its successors and assigns; and upon and to Developer, its successors and permitted assigns.
- G. Gender and Number. The use of any pronoun in reference to DHHL or Developer shall be construed to mean the singular or plural, the masculine, feminine, or neuter, as the instrument and context may require.
- H. Captions. All captions used in this Agreement are convenience only and are not to be construed as limiting in any manner the context of any paragraph, section or particular provision.
- I. No Party Deemed Drafter. The parties agree that neither party shall be deemed to be the drafter of this Agreement and that in the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against either party as the drafter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

DEPARTMENT OF HAWAIIAN HOME LANDS

JOBIE M. K. MASAGATANI
Chairman, Hawaiian Homes Commission

By _____
Its _____

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit A. Chairman's Approval of Developer

[to be attached]

Exhibit B. Kauluokahai (East Kapolei II) Master Plan

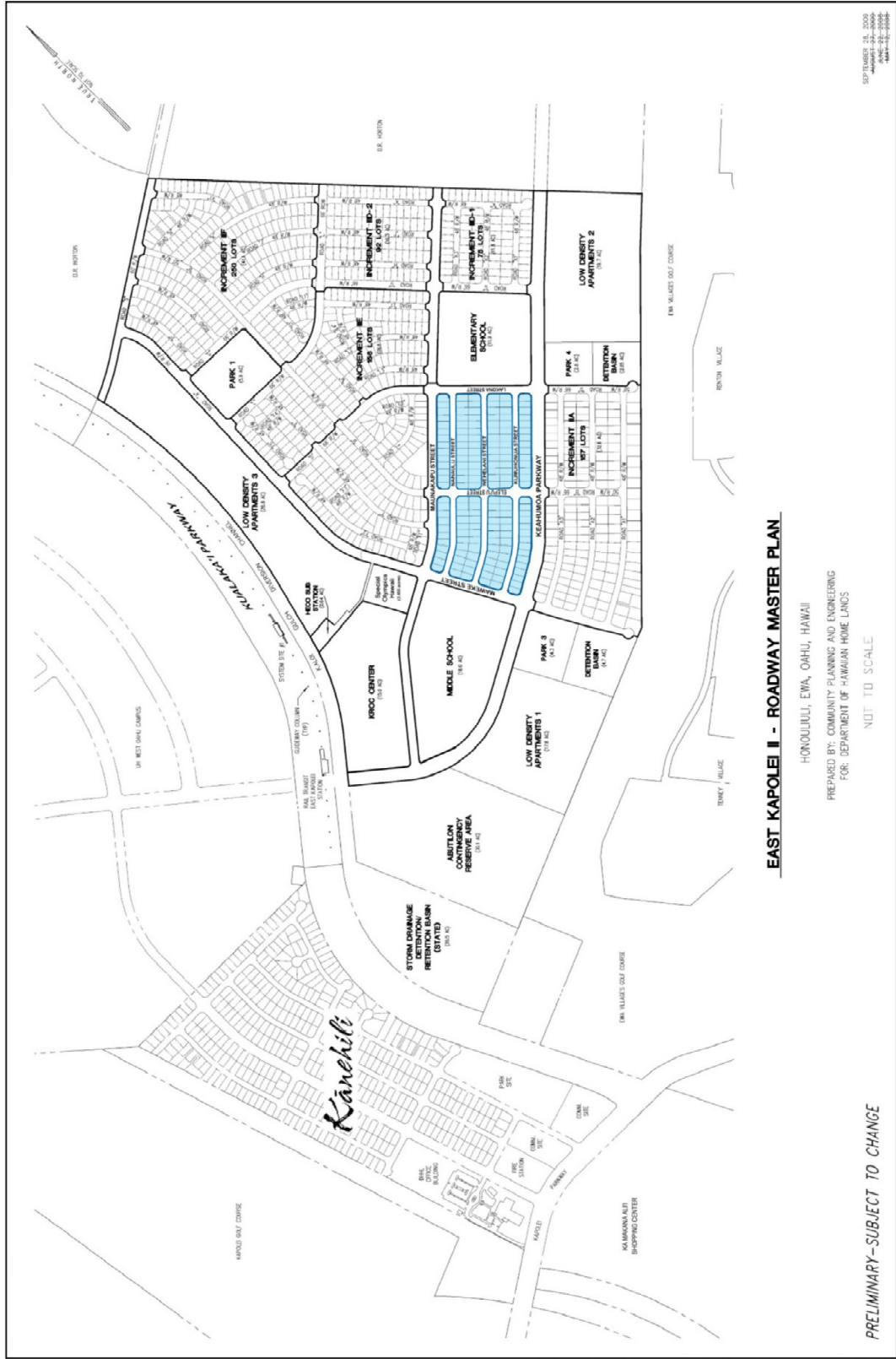


Exhibit C. Kauluokahai, Increment IIB Project Land

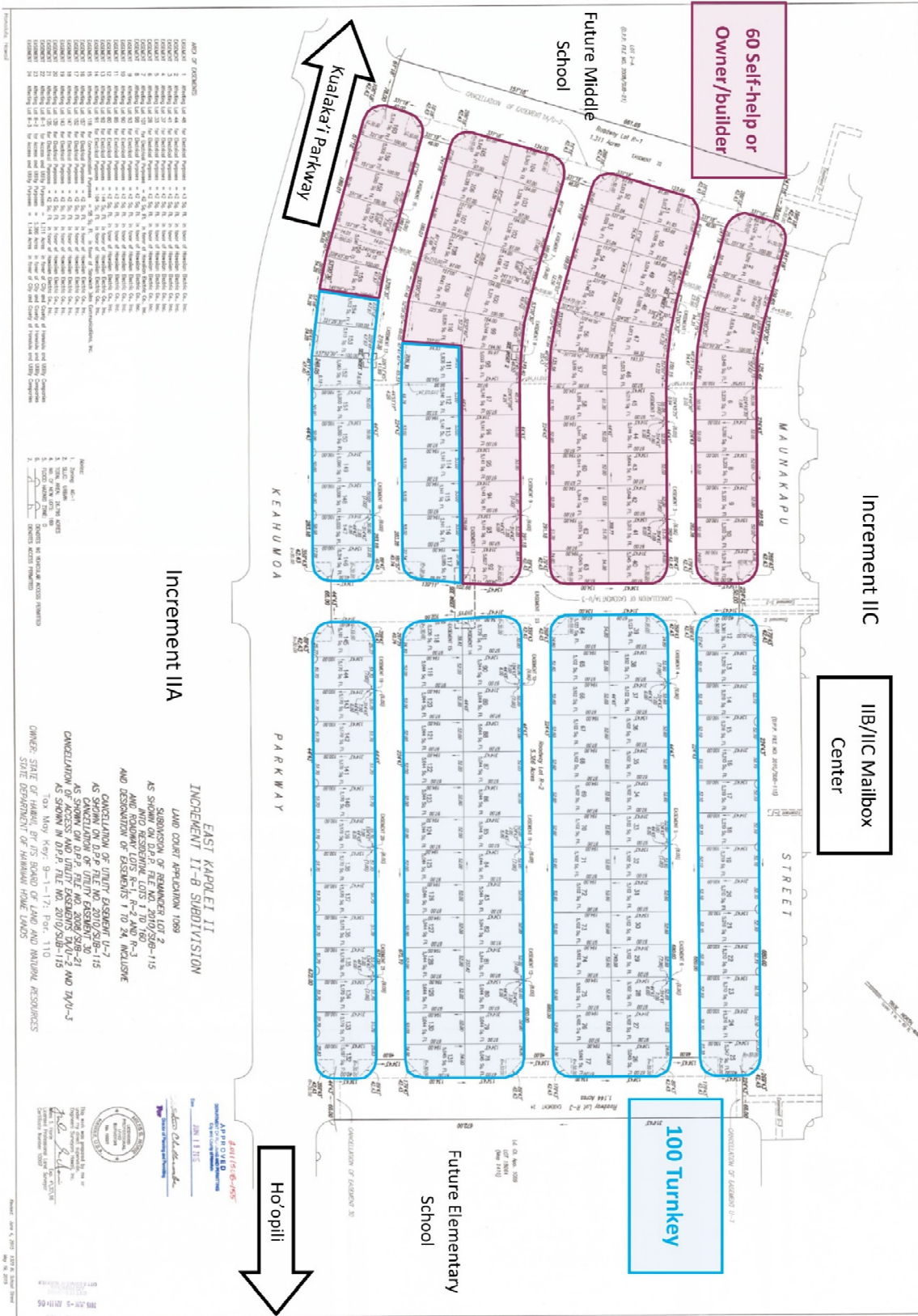


Exhibit D. Sales Program

[to be attached]

Exhibit E. Preliminary Project Budget

[to be attached]

Exhibit F. Preliminary Project Schedule

[to be attached]